

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 13,029

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Appeal of)

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INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare denying her medicaid benefits retroactive from May, 1994. The issue is whether the petitioner's failure to apply for medicaid during this time precludes the retroactive granting of benefits.

FINDINGS OF FACT

The facts are not in dispute. The petitioner is an elderly individual who has resided in a nursing home since June, 1989. The petitioner entered the nursing home after a stay in the hospital.

The petitioner's nephew is her power of attorney. The nephew alleges that when the petitioner was in the hospital in 1989 a hospital social worker told him that as the petitioner's power of attorney he was responsible for all the petitioner's medical bills.

From June, 1989, through April, 1994, the nephew paid all the petitioner's nursing home and other medical bills, which, according to the nephew, totalled over \$200,000.00-- more than half of which the nephew paid with his own money.⁽¹⁾

The nephew only recently filed an application for medicaid in the petitioner's behalf. The Department granted this application, but only effective as of May 1, 1994. The nephew does not allege that anyone associated with the Department ever misled or discouraged him from filing an application.

ORDER

The Department's decision is affirmed.

REASONS

Medicaid Manual (MM) § M111 includes the following provisions:

Application Requirement

An individual who wants Medicaid must file a Medicaid application with the Department except:

An individual who has applied at a Social Security Office for Supplemental Security Income.

...

Filing an application means taking or mailing a signed Medicaid application form to a Department Office, preferably the District Office responsible for the town where the applicant lives. Department offices give Medicaid application forms to any individual who asks for one. Medicaid providers, referring agencies and other locations serving the public may also keep supplies of application forms.

The application form must be signed by the individual applying for Medicaid or his/her authorized representative.

MM § M113 provides that medicaid can only be granted up to three months retroactive to the date of application.

The board has held that when an individual can show that the Department misled or discouraged that individual from filing an application for benefits for which that individual was otherwise eligible, the Department can be "estopped" from requiring the filing of a written application covering the period in question.⁽²⁾ The Board is aware of no provision or precedent, however, that would establish retroactive eligibility for medicaid because a potential applicant was misled or misinformed by a third party--i.e., someone not connected with the Department.⁽³⁾

There being no question that Department's decision in this matter is fully in accord with the above regulations,

the Board is bound by law to affirm that decision.⁽⁴⁾ 3 V.S.A. § 3091(d) and Fair Hearing Rule No. 19.

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1. According to the nephew the petitioner had a \$6,000.00 pension, received \$25,000.00 in Social Security benefits, and had a \$46,000.00 profit from the sale of her house, all of which the nephew applied to the petitioner's nursing home bills during this period, with the remainder being paid with his own money. The nephew is seeking "reimbursement" from medicaid for the amount of his own money spent on the petitioner's nursing home bills during this period.

2. See Fair Hearing Nos. 10,195 and 6,908.

3. The hearing was continued several weeks to allow the nephew's attorney to find such a precedent. He indicated he was unable to do so.

4. This decision in no way addresses or considers whether the nephew has a cause of action against the party he claims gave him the unfortunate advice.